

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6495

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ADOLFO VALDEZ,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Senior District Judge. (CR-92-9-7-F)

Submitted: August 28, 2003

Decided: September 4, 2003

Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Adolfo Valdez, Appellant Pro Se. Robert Edward Skiver, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Adolfo Valdez seeks to appeal the district court's order denying his petition for a writ of error coram nobis filed under 28 U.S.C. § 1651 (2000). We have reviewed the record and the district court's order and find no reversible error. A writ of error coram nobis is available only when the petitioner is not in custody. See, e.g., United States v. Sawyer, 239 F.3d 31, 37 (1st Cir. 2001). Because Valdez is in federal custody and has filed a prior motion under 28 U.S.C. § 2255 (2000), he may not circumvent the gatekeeping provisions of § 2255 ¶ 8 and 28 U.S.C. § 2244 (2000), by filing a petition under § 1651. United States v. Noske, 235 F.3d 405, 406 (8th Cir. 2000). Accordingly, we affirm the district court's order denying relief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED